

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

BRANDON CALLIER,

Plaintiff,

v.

FOX CAPITAL GROUP INC., a Florida
Corporation*Defendant.*§
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Civil Action No. 3:25-cv-00045- LS

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF FLORIDA

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COUNTY OF BROWARD

BEFORE ME, the undersigned official, on this day personally appeared Shloime Nelken known to me to be a credible person and who, after having been by me first duly sworn, on their oath depose and stated the following:

1. My name is Shloime Nelken. I am over the age of eighteen (18) years and I am qualified to make this affidavit. I have personal knowledge of the facts stated herein based upon the performance of my duties as Manager for Fox Capital Group, Inc. ("Fox Capital" or "Defendant"), and the facts stated herein are within my knowledge, true, and correct. I have personally reviewed the records of Fox Capital as they relate to the proposed contract with Approved Business Solutions, LLC ("Approved Solutions") and am personally familiar with the business practices of Fox Capital.

2. I am a custodian of records for Fox Capital. Attached hereto as Exhibits "1-A" through "1-C" are records held by Fox Capital. These said records are kept in the regular course

of business, and it is the regular course of business of Fox Capital for an employee or representative of Fox Capital, with knowledge of the act, event, condition, opinion or diagnosis recorded, to make the record or to transmit information thereof to be included in such record; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

3. Fox Capital is a Florida corporation with its primary place of business located in Hollywood, Florida. Fox Capital provides revenue-based financing to various businesses by purchasing a portion of their future revenue stream or account receivables (the “Receipts”) at a discounted specified purchase price.

4. Attached hereto and incorporated by reference herein as Exhibit 1-A is a true and correct copy of the April 30, 2025, Florida Profit Corporation Annual Report for Fox Capital which demonstrates the principal place of business as Hollywood, Florida.

5. Fox Capital was incorporated in Florida in 2014 and operates exclusively from its offices in the State of Florida. Fox Capital does not maintain an office or have employees in the State of Texas. Additionally, Fox Capital has never maintained an office or had employees in the State of Texas except for possible limited exceptions of litigation requirements which may have been in Texas.

6. Fox Capital’s interactions with Texas are limited to offering merchant cash advance agreements to companies throughout the United States, including Texas. In furtherance of this business, Fox Capital will record UCC-1 Financing Statements in Texas, usually through a third-party company, as allowed under the Uniform Commercial Code, and will defend and occasionally prosecute litigation in the State of Texas when the need arises.

7. Fox Capital does not make outbound “sales” or solicitation calls and does not utilize third-parties to the same. Fox Capital’s leads come from independent sales organizations (“ISO”) and

independent brokers that submit leads to multiple companies, including Fox Capital. These ISOs and brokers operate independently of Fox Capital's direction and are non-exclusive. Further, Fox Capital does not solicit, market, or attempt to "sign up" customers via telephone calls and only ever has calls with customers once a contract is approved and signed but before performance in order to verify information. Fox Capital's relationship with the ISOs and brokers, even when a contract exists, is one of independent contractor. The brokers and ISOs are non-exclusive and are not allowed to market Fox Capital's products, speak on behalf of Fox Capital, or hold themselves out as representing Fox Capital.

8. In Plaintiff Brandon Callier's First Amended Complaint, he alleges that BizCashandCapital ("BizCash") is either the assumed name of Fox Capital or that BizCash is an agent of Fox Capital. However, Fox Capital does not have the assumed name "BizCash" and has no business relationship, whether under written, verbal, or informal agreement, with a company called BizCash. To put it simply, Fox Capital has no connection to or knowledge of BizCash. Further, Fox Capital never authorized nor is aware of BizCash, Ryan Smith, or Marc Anderson to speak with anyone on Fox Capital's behalf.

9. Fox Capital has never authorized BizCash, Mr. Smith, or Mr. Anderson to speak on its behalf, market its products, engage in telecommunication solicitation campaigns, or any other activities. Further, Fox Capital has no communications with these alleged parties and has never participated in "call campaigns" or produced a "script" for telemarketing attempts. In fact, Fox Capital has never received any complaints or allegations regarding any of the individuals in Mr. Callier's First Amended Complaint because it does not engage in telemarketing campaigns and does not solicit sales or leases of any item or service via telephone.

10. Fox Capital does not have any business relationship with Mr. Callier, nor has Fox Capital or anyone acting on Fox Capital's behalf called Mr. Callier on his number ending in 4604 or

any other number knowingly associated with Mr. Callier. Further, Fox Capital has no contracts with, or even proposed/prospective contracts with Mr. Callier or any known, associated business of Mr. Callier.

11. Contrary to Mr. Callier's accusation in the First Amended Complaint, Fox Capital did not receive the application for Approved Business Solutions, LLC signed by Michael Delgado, from BizCash. Instead, Fox Capital received an application in March 2024, from Unlimited Funds, LLC, an ISO that had sent prior applications to Fox Capital and other companies in the past. Fox Capital has no knowledge where Unlimited Funds, LLC received the application, but processed the request, reviewed the application, and submitted a proposed contract to Approved Business Solutions, LLC as requested. However, that contract was never executed and Fox Capital never made any phone calls or telecommunications related thereto. Further, Fox Capital has not spoke to non-party Michael Delgado. A true and correct copy of the proposed Approved Business Solutions, LLC contract is attached hereto and incorporated by reference herein as Exhibit "1-B." A true and correct copy of the ISO Agreement is attached hereto and incorporated by reference herein as Exhibit "1-C."

12. As shown by the ISO Agreement with Unlimited Funds, LLC, Paragraph 22 expressly states that Unlimited Funds, LLC is not an agent of Fox Capital.

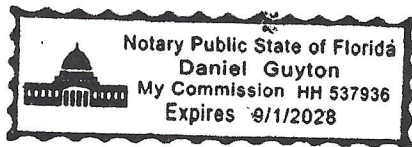
13. In short, Fox Capital did not engage in any control or business activity with BizCash or its purported affiliates or employees. Fox Capital never had contact with Mr. Callier and never engaged in or authorized any telecommunications to Mr. Callier for the purposes of soliciting the purchase or lease of any item or service or, in fact, for any other purpose.

Executed this the 19 day of May, 2025.

Fox Capital Group LLC

By: Shloime Nelken
Its: Manager

SUBSCRIBED AND SWORN TO before me by the said Shloime Nelken on this the 19
day May, 2025, to certify which witness my hand and seal of office.



Notary Public
In and For Said County and State